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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 IN RE: HIGH-TECH EMPLOYEE
23 ANTITRUST LITIGATION

24 THIS DOCUMENT RELATES TO:

25 All Actions

26 Master Docket No. 11-CV-2509-LHK

27 **PLAINTIFFS' ADMINISTRATIVE
28 MOTION TO UNSEAL ALL PAPERS
ASSOCIATED WITH PLAINTIFFS'
MOTION TO COMPEL**

Judge: Honorable Lucy H. Koh

Pursuant to the Court's March 27, 2014 Case Management Order requiring Plaintiffs to file their Motion to Compel under seal (the "Order"; Dkt. 768), Plaintiffs hereby move pursuant to Civil Local Rule 7-11 and 79-5(d) to authorize the filing under seal of Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel ("Reply"). Plaintiffs understand they are required to file their Reply under seal pursuant to the Court's Order. However, Class members and the public should have the ability to review all papers filed in connection with Plaintiffs' Motion to Compel, including Plaintiffs' Reply. Accordingly, Plaintiffs respectfully request that the Court revisit its Order (Dkt. 768), and make all of these documents available publicly.

The Court has reviewed closely Defendants' voluminous requests to keep documents and information from the Class and the public, granting Defendants' requests only when "good cause" truly exists. (*See, e.g.*, March 14, 2014 Order Granting in Part and Denying in Part Motions to Seal; Dkt. 730.) As the Court explained: "Even under the 'good cause' standard of Rule 26(c), however, a party must make a 'particularized showing' with respect to any individual document in order to justify sealing the relevant document. *Kamakana*, 447 F.3d at 1180; *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist.*, 187 F.3d 1096, 1103 (9th Cir. 1999). 'Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.' *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (internal quotation marks and citation omitted)." (*Id.* at 3.)

No information disclosed in these documents satisfies the good cause standard. In Plaintiffs' administrative motion to seal Plaintiffs' Motion to Compel, Plaintiffs made clear they "disagree with Defendants that Plaintiffs' Motion to Compel should be filed under seal[.]" (Dkt. 789 at 2.) Nonetheless, Defendants failed to file the requisite "declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable." Civ. L. R. 79-5(e)(1). That is, Defendants failed to make any showing whatsoever that the information contained in Plaintiffs' Motion to Compel should remain under seal. When Defendants filed their Opposition to Plaintiffs' Motion to Compel, Defendants again made no showing. (Dkt. 878.) Instead, Defendants only referenced the Court's Order (Dkt. 768), and quoted from the transcript of the March 27, 2014 Case Management Conference, in which the Court agreed to permit the

1 briefing to be filed under seal in the first instance. (Dkt. 878 at 2.) But permitting Defendants to
 2 file these papers under seal initially should not be construed as allowing these documents to
 3 remain under seal indefinitely, particularly given Defendants' failure to provide good cause,
 4 during that conference or afterward. Defendants have failed to even make "broad allegations of
 5 harm," much less the requisite "particularized showing." (Dkt. 730 at 1-3.)

6 As the Third Circuit has observed, "because of the peculiar posture of class actions
 7 whereby some members of the public are also parties to the class action . . . the test for overriding
 8 the right of access should be applied in this case with particular strictness." *In re Cendant Corp.*,
 9 260 F.3d 183 (3d Cir. 2001). Protecting the access right in class actions "promotes class
 10 members' confidence in the administration of the case" and "provides class members with a more
 11 complete understanding of the class action process and a better perception of its fairness." *Id.*
 12 (internal editing omitted). The Court should allow Class members and the public to review these
 13 documents.

14 Dated: September 19, 2014

Respectfully Submitted,

15 By: /s/ Dean M. Harvey

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